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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/671,635	09/28/2000	Nickolai Alexandrov	2750-1026P	5385
2292	7590	06/13/2005	EXAMINER	
BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			MARTINELL, JAMES	
			ART UNIT	PAPER NUMBER
			1634	

DATE MAILED: 06/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/671,635

**Applicant(s)**

ALEXANDROV ET AL.

**Examiner**

James Martinell

**Art Unit**

1634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-50 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

Art Unit: 1634

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-24 and 30-50, drawn to polynucleotides, vectors, host cells, methods of introducing vectors into cells, methods of modulating transcription, nucleic acid molecular hybridization assays, plant host cells, and plants, classified in class 536, subclass 23.6, class 435, subclasses 410, 6, 40, and 468, and class 800, subclasses 278 and 295.
- II. Claims 25-28, drawn to polypeptides, classified in class 530, subclass 350.
- III. Claim 29, drawn to antibodies, classified in class 536, subclass 387.1.

The inventions are distinct, each from the other for the following reasons. The polynucleotides, vectors, host cells, and plants of Group I are materially different from and are therefore independent and distinct from the polypeptides of Group II and the antibodies of Group III. The methods of Group I are not needed to produce the polypeptides of Group II or the antibodies of Group III. The polypeptides of Group II are materially different from and are therefore independent and distinct from the antibodies of Group III.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their different classification and recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Art Unit: 1634

Claims 1-24 and 30-50 are drawn to nucleotides, nucleotide constructs, and/or methods requiring the use of nucleotides or nucleotide constructs that contain more than one individual, independent, and distinct nucleotide sequence in alternative form. Accordingly, these claims are subject to restriction under 35 U.S.C. § 121 as outlined in 1192 O.G. 68 (November 19, 1996). This notice permits the examination of from one to ten independent and distinct nucleotide sequences in a single application based upon USPTO resources.

Applicant is required to select no more than ONE of the individual sequences for examination. The search of the no more than ONE selected sequence may include the complement of the selected sequence and, where appropriate, may include subsequences within the selected sequence (*e.g.*, oligomeric probes and/or primers).

Claims 25-29 are drawn to more than one unrelated, independent, and distinct polypeptide, antibody, or methods requiring the use of more than one unrelated, independent, and distinct polypeptide or antibody. Should applicants elect one of Groups II or III for examination, applicants are further required to select one polypeptide or a set of methods that requires the use of only one polypeptide for examination on the merits.

The instant application does not comply with the Sequence Rules (*i.e.* 37 CFR §§ 1.821-1.825) for the following reasons:

- (a) Sequences appear in the application without identifying SEQ ID NOs (see 37 CFR § 1.821(d) and MPEP 2422) on at least the following pages: 61, 63, 64, 67-82, 84-90, 92, 95, 97-105, 107, 108, 110, 111, 113-115, 117, 119, 121, 122, 125-128, 130, 132, 135, 137-141, 143, 144, 146, 148, 150-152, 154, 156-158, 161-168, 170, 173-175, 177-179, 181-186, 188-193, 195-200, 202-210, 212-214, 216-220, 222-231, 233, 235-239, 241-243, 246-251, 253-265, 267-278, 281-284, 286, 287, 289-291, 293-303, 305-307, 309, 310, 312-323, 325, 326, 328-332, 335-337, 339-346, 348-357, 359-361, 363-372, 377, 379-386, 388-399, 401, 404-427, 429-472, 474-477, 479-482, 484, 485,

Art Unit: 1634

487-501, 503-515, 517-549, 551, 552, 558-562, 564, 566, 567, 569-572, 574, 575, 577-579, 581, 583-585, 587, 589-591, 596, 597, 599, 600, 602-607, 610, 612, 614-616, 618-621, 624, 626-630, 632-640, 646, 647, 649-654, 656-658, 661, 663, 666, 668, 669, 671-673, 676-678, 681, 683, 686, 698, 700, 701, 703, 704, 708, 709, 711-713, 716, 717, 720, 723, 724, 727, 731, 732, 735-737, 739-742, 744-746, 750-754, 756-758, 761, 763-767, 774, 775, 777-779, 782-786, 788, 790, 792, 794, 795, 798-800, 810, 811, 815, 818-821, 824, 825, 832, 833, 835, 836, 838, 842, 843, 847, 849, 851, 853, 855-857, 860-868, 870-872, 876-880, 883-885, 889, 890, 895-899, 901, 905-912, 914, 919, 921, 923, 925, 927, 929, 930, 932-934, 941-943, 946-948, 954, 958, 960, 962-964, 966-968, 973, 977-984, 986, 988, 992, 998, 999, 1001, 1003, 1005-1008, 1010, 1012-1014, 1016-1028, 1032, 1034, 1036, and 1039.

Appropriate correction is required. For any response to this Office action to be considered a complete response, applicants must submit a response that brings the application into compliance with the Sequence Rules as discussed herein.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Martinell whose telephone number is (571) 272-0719. The fax phone number for Examiner Martinell's desktop workstation is (571) 273-0719. Only documents such as those intended for use in a personal or telephone interview should be faxed to the examiner's desktop workstation. Any Official Communication to the USPTO should be faxed to (571) 273-8300.

The examiner works a flexible schedule and can be reached by phone and voice mail. Alternatively, a request for a return telephone call may be e-mailed to [james.martinell@uspto.gov](mailto:james.martinell@uspto.gov). Since e-mail communications may not be secure, it is suggested that information in such requests be limited to name, phone number, and the best time to return the call.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Jones, can be reached on (571) 272-0745.

Art Unit: 1634

**OFFICIAL FAX NUMBER**

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300. Any Official Communication to the USPTO should be faxed to this number.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to (571) 272-0547.

Patent applicants with problems or questions regarding electronic images that can be viewed in the Patent Application Information Retrieval system (PAIR) can now contact the USPTO's Patent Electronic Business Center (Patent EBC) for assistance. Representatives are available to answer your questions daily from 6 am to midnight (EST). The toll free number is (866) 217-9197. When calling please have your application serial or patent number, the type of document you are having an image problem with, the number of pages and the specific nature of the problem. The Patent Electronic Business Center will notify applicants of the resolution of the problem within 5-7 business days. Applicants can also check PAIR to confirm that the problem has been corrected. The USPTO's Patent Electronic Business Center is a complete service center supporting all patent business on the Internet. The USPTO's PAIR system provides Internet-based access to patent application status and history information. It also enables applicants to view the scanned images of their own application file folder(s) as well as general patent information available to the public.

For all other customer support, please call the USPTO Call Center (UCC) at 800-786-9199.

  
**James Martinell, Ph.D.**  
**Primary Examiner**  
**Art Unit 1634**

6/9/05